

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration	:
of a Dispute Between	:
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	: Case 20
MAYVILLE SCHOOL DISTRICT	: No. 47383
	: MA-7251
and	:
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MAYVILLE EDUCATION ASSOCIATION	:
	:

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Appearances:

Mr. Armin Blaufuss, Executive Director, WinnebagoLand UniServ Unit-South, P.O. Box 1195, Fond du Lac, Wisconsin 54936-1195, appeared on behalf of the Association.

Mr. Edward Williams, Godfrey & Kahn, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902, appeared on behalf of the District.

ARBITRATION AWARD

On May 7, 1992, the Mayville Education Association and the Mayville School District filed an arbitration request with the Wisconsin Employment Relations Commission, asking the Commission to appoint William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. A hearing was conducted on May 26, 1992 in Mayville, Wisconsin. The proceedings were not transcribed, nor were written briefs submitted. The parties requested an expedited award.

This award addresses the right of the school district to cancel a student contact day and unilaterally reschedule that day at the end of the contract year.

BACKGROUND AND FACTS

The District and the Association entered into a collective bargaining agreement for the period 1989-91. One of the provisions of that contract created a school calendar which extended into the 1991-92 school year. That calendar featured 179 contact days, one prep day, three paid vacation days, two parent-teacher conference days, and five in-service days. As originally designed, the calendar ended with a student instruction day on Wednesday, June 3 and a one-half day preparation day on Thursday, June 4. The parties experienced a snow day on December 20, 1991, which necessitated the closing of schools. The make-up day was scheduled for Thursday, June 4, 1992. As a consequence, the one-half prep day was moved to Friday, June 5. The parties stipulated that their practice with respect to at least the one-half preparation day occurring at the end of the school calendar is that it is treated flexibly. That is, teachers who can get their books and grades turned in either before or shortly after the prep day are not required to come to work on the calendared prep day. Those teachers must make prior arrangements to satisfy their obligations with their respective principals before the prep day occurs.

The Mayville varsity basketball team experienced a good deal of success during the 1991-92 school year. The team went to the regional tournament and won. Following that, it began to occur to District Administrator Steve Bushke that there was a possibility the team could go all the way to the state tournament, held in Madison, Wisconsin. Many games of the state basketball tournament are played during the normal school day. Bushke approached Louise Maciejewski, chief negotiator for the Mayville Education Association, with his anticipated concern. On or about March 9, Bushke approached Maciejewski and

indicated to her that if the team went to the state tournament it would be scheduled to play on March 19. Bushke asked Maciejewski whether the M.E.A. would be agreeable to working on March 20, a regularly scheduled day off, in exchange for closing the school down on March 19. During that conversation, Maciejewski suggested exploring the possibility of shutting down both March 19 and 20 and scheduling April 23 and/or 24, the Thursday and Friday following Easter, as a day of instruction. The two also discussed the possibility of simply conducting school on the 19th of March. The conversation ended with Maciejewski agreeing to survey the teaching faculty to see what was, and was not, possible. Maciejewski went forward and surveyed the teachers. The results of the survey indicated that a substantial number of teachers had plans on March 20 and also on April 23 and 24. Those plans were not easily subject to change, and a number of teachers objected to either of those alterations of the schedule.

The following week, Maciejewski indicated to Bushke that she had conducted the survey and that neither of the two suggested alternatives would work. Bushke ultimately indicated that it was his intent to cancel school on March 19 and make up the day on June 5. Maciejewski replied that she would file a grievance over the make-up if it was scheduled on June 5. Maciejewski indicated she had no objection to the District simply cancelling the day but that she did object to a June 5 make-up.

The basketball team did make it to the state tournament. At its March 16 meeting, the school board approved closing school on March 19. The next day, March 17, an announcement was made that school would be closed on March 19. Buses left early on the morning of March 19. Eight of the 14 district buses transported students and fans to Madison. The game proved to be a big event with large attendance.

The Mayville varsity basketball team has gone to the state tournament on two previous occasions. In 1983 and again in 1985 school was cancelled because the team was travelling to Madison for the state tournament. Days missed on both occasions were not made up. In 1984 school was cancelled and not made up because of the funeral of the high school principal's wife. Since January, 1983 the only days school has been cancelled other than the three cited above have been due to inclement weather. The sole exception to that is one day when the boiler was broken at Parkwood Elementary School and that school was closed for the day with the balance of district schools operating.

In 1986 the Department of Public Instruction became more stringent in counting classroom days.

## ISSUE

The parties stipulated to the following issue:

Did the Mayville School District violate the collective bargaining agreement between it and the Mayville Education Association when it cancelled a teacher contract day - March 19, 1992 - and unilaterally rescheduled that teacher contract day for June 5, 1992?

If so, what shall the remedy be?

## RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

### ARTICLE VIII - WORKING CONDITIONS

#### A. School year and school calendar

1. The school year shall consist of a maximum of 190 days. The 190 day contract shall include Labor Day, Memorial Day, Thanksgiving Day, five in-service days, and 181 days of actual instruction, and one (1) day of teaching prep/recordkeeping (1/2 day at beginning, 1/2 day at end of school year).
2. Emergency school closing is an administrative function. All days that school must be closed due to emergency conditions will be re-scheduled at the end of the year.
3. Beginning with the 1983-84 school year, the school calendar shall be part of the master agreement titled Appendix F. The proposed school calendar shall be drawn up by the superintendent and presented to the M.E.A. The M.E.A. shall submit any recommendations for changes to the proposed calendar to the superintendent by December 1. The school board shall then set the school calendar. The calendar will be negotiated and deviation from the schedule may be made by mutual agreement.

## POSITIONS OF THE PARTIES

The Association believes the District violated Article VIII, Section A, 3. The Association believes that the Employer is obligated to secure the mutual agreement of the Association to change the calendar. The District began the process and when unsuccessful, looked elsewhere to justify its unilateral actions. The Association argues that no emergency existed. The event was not sudden, and was foreseen at least as early as March 5. Alternatives were suggested and rejected by the District. The District is free to simply treat December 20 as a school day, but has rejected that option. The Association argues that the Employer is not free to create its own emergency.

It is the view of the District that it is an administrative function to close schools for an emergency. The contract specifically addresses the rescheduling of missed classes and requires that they be added to the end of the school year. The parties attempted to work out a mutually agreeable solution and failed. The Board argues that the past practice is inapplicable.

There is no identity of circumstances and conditions. A funeral is not the equivalent of a state basketball tournament. The loss of heat in a single building is not identical to the present situation. Since the prior two state tournaments which occurred in 1983 and 1985 respectively, the Department of Public Instruction has tightened its construction of what constitutes days of instruction. In a small school system, a state basketball tournament is a big event. The superintendent had no control over the success of the basketball team or the concerted desire of the citizenry to attend the event. A decision had to be made and was; it was made for the good of the community. The District had no more than ten days to realistically determine what it would do. The Board has contracted for 190 days of instruction. Here, the Union argues for 190 days pay for 189 days work.

#### DISCUSSION

The critical provision of the labor agreement is Article VII, "Working Conditions". Section "A" is determinative. Paragraph number 1 provides that the school year shall consist of a maximum (emphasis mine) of 190 days. In my view, the use of the modifier "maximum" at least suggests the possibility of a school year of less than 190 days. Paragraph number 2 provides "all days that school must be closed (emphasis mine) due to emergency conditions. . ." It is my view that attendance at the state basketball tournament is not an event which requires, or mandates that school be closed. However unpopular the decision to keep school open and require attendance that was an option available to the school district. Control over that decision was one which remained with the District. The District was free to close the high school only and leave the balance of the system operative. Paragraph 3 defines how the calendar is established. Once established, the last sentence of the paragraph provides: "The calendar will be negotiated and deviation from the schedule may be made by mutual agreement." There was no mutuality in the deviation from the negotiated calendar.

The parties had experienced the state tournament in the past. The Mayville varsity team had gone to the state tournament in 1983 and again in 1985. The parties understood that going to the tournament was a big event. There was extensive testimony about the extensive community involvement and enthusiasm that surrounded prior trips to the tournament. In my view, the Employer knew, or should reasonably have known, that there would be a public/student demand to attend the tournament if and when the Mayville team was ever able to return. On prior occasions, class was cancelled and not made up. It is not unreasonable to hold the school board to knowledge that should the team go again, and classes be cancelled, teachers might well expect no make-up. There was no effort on the part of the Employer to modify the collective bargaining agreement in a way that might permit a different result.

The District contends that the 1986 DPI administrative rule changes modified the factual underpinnings of the practice. I disagree. The parties stipulated that the District is free to count December 20 as a contact day per DPI regulations and to satisfy its statutory requirement for both contact days and hours. Given that fact, I don't believe the 1986 DPI regulatory changes impact the factual basis that gave rise to the practice of closing school with no make-up.

The District is right when it argues that it contracted for and pays for, 190 days. It also contracted for a calendar that is set forth in the labor agreement and agreed not to modify absent mutual agreement. That calendar and its terms are as much a part of the agreement as are the 190 days. The District is free to modify the calendar where a bona fide emergency arises. As already noted, I do not regard this as an emergency vesting the Board with such authority.

AWARD

The grievance is sustained.

RELIEF

In my view, the parties have satisfied the calendar set forth in their collective bargaining agreement by treating Thursday, June 4 as a student contact day and one-half of Friday, June 5 as a prep day, as already described. Should the school district determine to extend the bargained contract by one day, it will be liable to its faculty for pro rata monies on a 1/190 basis for each day added.

Dated at Madison, Wisconsin this 27th day of May, 1992.

By William C. Houlihan /s/  
William C. Houlihan, Arbitrator